Filed 8/12/15 P. v. Collins CA5



**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DANTE LAMONT COLLINS,

Defendant and Appellant.

F068252 & F068253

(Super. Ct. No. BF143771A, BF144532A)

# OPINION

## THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Michael G. Bush, Judge and Harry M. Dougherty, Temporary Judge. (Pursuant to California Constitution, article VI, section 21).†

Allan E. Junker, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and Leanne LeMon, Deputy Attorneys General, for Plaintiff and Respondent.

---

* Before Gomes, Acting P.J., Kane, J. and Smith, J.

† Judge Bush presided over the hearing on the motion to suppress in BF144532A; Judge Humphrey presided over the trial in BF143771A. No issues are raised on appeal in BF143771A.

-ooOoo-

After the trial court denied his motion to suppress evidence of the methamphetamine found by officers during a search of the trunk of the car he was driving, defendant Dante Lamont Collins pled no contest to possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)). The court sentenced him to two years in prison, to be served concurrently to his two-year term in another case. On appeal, he contends the trial court erred in denying his motion to suppress because the officers (1) impounded the car without a community caretaking justification and (2) failed to follow standardized procedures when they conducted an inventory search of the trunk. We affirm.

## FACTS[1]

### *I. Evidence*

On October 11, 2012, at around 2:20 p.m., a man stole a parcel containing a wetsuit from a residence in Bakersfield. The man got into the passenger side of a tan Lexus and it drove away. The victim witnessed the theft, followed the Lexus, and called the police. Officer Gospich responded and stopped the Lexus on Ming Avenue, a busy street without parking. Collins was the driver.

When Officer Wright arrived, Collins and his passenger were already being taken out of the Lexus. Officer Wright spoke to the passenger, and he admitted what he had done. He said the stolen property was in his backpack in the backseat of the Lexus. Officer Wright immediately searched the backseat and recovered the stolen wetsuit.

Officer Wright testified that from the moment the officers received the dispatch regarding the crime, they naturally assumed there was stolen property in the Lexus. Officer Wright retrieved the wetsuit, which he believed was the only property stolen in this case. But the Lexus also contained burglary tools and other things that led the

[1] The facts are taken from the evidence presented at the hearing on Collins's motion to suppress.

officers to think "there could be anything in that car." Nevertheless, Officer Wright denied that the officers searched the trunk because they thought it might contain stolen property.

A records check revealed that Collins's driver's license was suspended. Officer Wright testified that, as soon as the officers learned this, they determined that the Lexus was going to be impounded. But he added that the Lexus would have been impounded anyway due to the arrest of Collins and his passenger. Officer Wright testified that he did not always impound a vehicle when its driver had a suspended license.

The Lexus was stopped in an illegal and unsafe location. For the safety of the Lexus and everyone present, the sergeant directed the officers to move the Lexus and all the people about one hundred yards to another street, El Portal Drive. Officer Wright moved the Lexus and parked it on El Portal Drive. He described the new location as safe, but he believed "no parking" signs were posted.

Officer Gerrity arrived after the Lexus had been moved. He believed it was legally parked on El Portal Drive. The decision to impound it had already been made. As part of the impoundment, Officer Gerrity conducted an inventory search of the trunk. Inside the trunk, he found a brown briefcase, which contained a small black case, inside which was a usable amount of methamphetamine.

## *II. Argument*

After the presentation of this testimony, the prosecutor argued the officers had reasonable suspicion to stop the Lexus based on the dispatch call regarding the theft. Once the officers learned Collins was driving on a suspended license, they decided to impound the vehicle. The inventory search produced the methamphetamine. Therefore, the search was lawful.

Defense counsel pointed out that the officers searched the trunk after they recovered the wetsuit. Citing *People v. Torres* (2010) 188 Cal.App.4th 775 (*Torres*),

counsel argued the inventory search of the trunk in the present case was merely a pretextual ruse for an investigatory search. After the officers moved the Lexus to a safe place in the middle of the day, they could have left it there; they did not need to impound it. The prosecution presented no evidence the officers impounded the Lexus to serve a community caretaking function.

The prosecutor responded that *Torres* was distinguishable because the officer in *Torres* stopped the defendant for the purpose of searching him and the impoundment was merely a pretext. In this case, however, the officers stopped Collins because of the theft that had just occurred. After doing so, they learned that he was driving on a suspended license, a fact that gave them the authority to impound the Lexus. When there is no licensed person present to drive the car away, as in this case, impoundment serves the community caretaking purpose of protecting the vehicle for its owner and protecting the police department from claims regarding loss to the vehicle.

Finally, defense counsel again argued the prosecution had failed to make the requisite showing that removing the Lexus from the street furthered a community caretaking function.

## *III. Trial Court's Ruling*

The trial court denied the motion to suppress, explaining:

> "What strikes the Court is the following:
>
> "First of all, the victim indicated there was one item stolen from his porch, I believe he said it was. And the officers found that item fairly quickly because the passenger made some type of admission. So as far as the officers knew, there was nothing else in the car that was stolen. It wasn't as if the victim had said there were several other items missing. Of course, if they had, that really gives the officers probable cause to search the car. So it doesn't appear—and they stopped the car because the car had the thief in it. It wasn't a pretextural [*sic*] stop.
>
> "Another thing that strikes me, it was parked in a way such that the officer, at least the sergeant, ordered the officers to move the car because it

was creating a hazard. I guess the sergeant could have said[,] 'Call a tow truck, we are going to impound this car right now.'

"I'm not sure that the officer is trying to be safe and prevent innocent community members from hitting that car would—I can't think of the word—do away with the right to impound the car because it was parked in a dangerous manner. Once it's parked in the neighborhood, this is generally the neighborhood where the theft occurred. And I think it's interesting how the citizens of our community would feel that if they catch a thief in a car, we get to leave the car there in the neighborhood, kind of a poke in your eye. [¶] Look it, this is the car that was the vehicle to steal from you and we are just going to leave it here in the neighborhood, which then means that maybe someone in the neighborhoods gets mad and damages the car. And, of course, that car had been damaged because someone got upset because that was the thief's car, then I'd be hearing a lawsuit by the defendant that the police department should have impounded his car and protected his car.

"So I think overall, the police officers had the right to and, in the court's opinion, should have impounded the car for everybody's safety—the citizens' safety, getting it off of a busy road, moving it to El Portal and for the defendant's safety that his car isn't damaged. I'm not suggesting the citizens in the neighborhood are those type of people that damage it, but you just never know. I think it was a good idea to move the car. So I'm going to deny the motion to suppress."

## DISCUSSION

### *I. Law*

When we review a trial court's ruling on a suppression motion, we defer to the trial court's factual findings, express or implied, that are supported by substantial evidence. (*People v. Hughes* (2002) 27 Cal.4th 287, 327; *People v. Pearl* (2009) 172 Cal.App.4th 1280, 1287 (*Pearl*).) "'In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment.'" (*Pearl*, *supra*, at p. 1287.)

The Fourth Amendment guarantees the right to be free of unreasonable searches and seizures by law enforcement personnel. A warrantless search or seizure is presumed to be unlawful. (U.S. Const., 4th Amend.; *Mincey v. Arizona* (1978) 437 U.S. 385, 390.)

"The prosecution always has the burden of justifying the search [or seizure] by proving [it] fell within a recognized exception to the warrant requirement." (*People v. Williams* (2006) 145 Cal.App.4th 756, 761 (*Williams*).)

An inventory search of a car impounded by police is a well-recognized exception to the search warrant requirement because it serves "to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." (*Colorado v. Bertine* (1987) 479 U.S. 367, 372 (*Bertine*); *Florida v. Wells* (1990) 495 U.S. 1, 4 (*Wells*).) The police have a legitimate interest in taking an inventory of the contents, including closed containers, in a car they legally impound. (*People v. Williams* (1999) 20 Cal.4th 119, 126.)

Nonetheless, it is well established that an inventory search must not be a "ruse for a general rummaging in order to discover incriminating evidence." (*Wells, supra,* 495 U.S. at p. 4; *People v. Williams, supra,* 20 Cal.4th at p. 126.) "'[A]n inventory search conducted pursuant to an unreasonable impound is itself unreasonable.'" (*Torres, supra,* 188 Cal.App.4th at p. 786.) "The purpose behind the decision to impound is crucial because of the reason for condoning inventory searches of impounded cars," which is to secure or protect the car and its contents. (*Id.* at pp. 786-787.)

"The decision to impound the vehicle must be justified by a community caretaking function 'other than suspicion of evidence of criminal activity' [citation] because inventory searches are 'conducted in the absence of probable cause.'" (*Torres, supra,* 188 Cal.App.4th. at p. 787.) "Just as inventory searches are exceptions to the probable cause requirement, they are also exceptions to the usual rule that the police officers' '[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.'" (*Ibid.*) "[C]ourts will explore police officers' subjective motivations for impounding vehicles in inventory search cases, even when some objectively reasonable basis exists for the impounding." (*Id.* at pp. 787-788.)

"As part of their '"community caretaking functions,"' police officers may constitutionally impound vehicles that 'jeopardize … public safety and the efficient movement of vehicular traffic.' [Citation.] Whether 'impoundment is warranted under this community caretaking doctrine depends on the location of the vehicle and the police officers' duty to prevent it from creating a hazard to other drivers or being a target for vandalism or theft.'" (*Williams, supra*, 145 Cal.App.4th at p. 761.) "Nothing … prohibits the exercise of police discretion [in deciding to impound a vehicle] so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity." (*Bertine, supra*, 479 U.S. at p. 375; see *South Dakota v. Opperman* (1976) 428 U.S. 364, 375-376.) Statutory authorization "may constitute a standardized policy guiding officers' discretion" (*Williams, supra*, at p. 763), but it "does not, in and of itself, determine the constitutional reasonableness of the [impoundment]" (*id.* at p. 762).

## *II. Analysis*

### A. Impoundment

Collins first contends there was no justification for impounding the Lexus because the prosecution failed to show that the officers were acting to further a community caretaking function. Collins says there was no evidence that the Lexus was blocking a driveway or crosswalk, that it posed a hazard or an impediment to traffic, that the officers had reason to believe it was stolen, or that it could not have been locked and left in the safe place to which it had been moved. We disagree.

The officers were statutorily authorized to impound the Lexus because Collins was driving with a suspended license. "Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, … the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle …. A vehicle so impounded shall be impounded for 30 days." (Veh. Code, § 14602.6, subd. (a)(1).) Furthermore, Collins's passenger had committed a

theft and was also going to be arrested. Thus, neither Collins nor his passenger could drive the Lexus away from its illegally parked location on Ming Avenue, a busy, unsafe street with no parking. It was reasonable for the officers to decide that this location presented a danger to the Lexus, to the officers, and to other vehicles and drivers on the roadway. Thus, the officers impounded the Lexus pursuant to a community caretaking function of protecting both people and vehicles.

Collins argues, however, that once the Lexus had been moved to El Portal Drive, the officers were no longer justified in impounding it because it was now in a safe location where it could be locked and left. But the officers were not required to retract their entirely reasonable decision to impound the Lexus simply because they had temporarily moved it to a safer location to complete the performance of their official duties, which included arresting Collins and his passenger and impounding the Lexus. We disagree with Collins's interpretation of the evidence regarding the new location. The officers described the new location on El Portal Drive as safe, but their testimony did not establish that the Lexus was legally parked there or that the neighborhood was one in which the Lexus could safely be left unattended for an unknown length of time.[2] The evidence simply did not support a finding that once the Lexus was moved to El Portal Drive, impounding the Lexus no longer served a community caretaking function.

We conclude that the officers' decision to impound the Lexus was constitutionally reasonable under all the circumstances.

**B. Standardized Procedure for Inventory Search**

Collins next argues the prosecution failed to present any evidence that the officers were following standardized procedures that would justify opening closed containers during their inventory search of the Lexus. The People concede the prosecution

[2] The trial court found that the Lexus was parked in the same neighborhood where the theft had occurred and, as a result, could have been at risk of vandalism there, but no evidence was presented on this subject at the suppression hearing.

presented no evidence on this issue but argue Collins has forfeited the issue by failing to raise it before the trial court, either in his suppression motion or at the suppression hearing. We agree.

In *People v. Williams*, *supra*, 20 Cal.4th 119, the Supreme Court explained that defendants moving to suppress evidence under Penal Code section 1538.5[3] "must inform the prosecution and the court of the specific basis for their motion. [¶] … [¶] [W]hen the basis of a motion to suppress is a warrantless search or seizure, the requisite specificity is generally satisfied, *in the first instance*, if defendants simply assert the absence of a warrant and make a prima facie showing to support that assertion. Of course, if defendants have a specific argument *other than the lack of a warrant* as to why a warrantless search or seizure was unreasonable, they must specify that argument as part of their motion to suppress and give the prosecution an opportunity to offer evidence on the point. [Citation.] For example, defendants who believe the police failed to comply with the knock-notice requirement of Penal Code section 844 cannot simply bring a motion to suppress alleging a warrantless search or seizure and then wait until the appeal to raise the knock-notice issue. Rather, defendants must specify the knock-notice issue in the course of the trial court proceeding. [Citations.]

"Moreover, once the prosecution has offered a justification for a warrantless search or seizure, defendants must present any arguments as to why that justification is inadequate. [Citation.] Otherwise, defendants would not meet their burden under section 1538.5 of specifying why the search or seizure without a warrant was 'unreasonable.' This specificity requirement does not place the burden of proof on defendants. [Citation.] As noted, the burden of raising an issue is distinct from the burden of proof. The prosecution retains the burden of proving that the warrantless search or seizure was reasonable under the circumstances. [Citations.] But, if defendants

---

[3] All statutory references are to the Penal Code unless otherwise noted.

detect a critical gap in the prosecution's proof or a flaw in its legal analysis, they must object on that basis to admission of the evidence or risk forfeiting the issue on appeal.

"In sum, we conclude that under section 1538.5, as in the case of any other motion, defendants must specify the precise grounds for suppression of the evidence in question, and, where a warrantless search or seizure is the basis for the motion, this burden includes specifying the inadequacy of any justifications for the search or seizure. In the interest of efficiency, however, defendants need not guess what justifications the prosecution will argue. Instead, they can wait for the prosecution to present a justification. Moreover, in specifying the inadequacy of the prosecution's justifications, defendants do not have to help the prosecution step-by-step to make its case. The degree of specificity that is appropriate will depend on the legal issue the defendant is raising and the surrounding circumstances. Defendants need only be specific enough to give the prosecution and the court reasonable notice. Defendants cannot, however, lay a trap for the prosecution by remaining completely silent until the appeal about issues the prosecution may have overlooked." (*People v. Williams, supra,* 20 Cal.4th at pp. 129-131.)

In this case, Collins's motion to suppress did not mention the officers' failure to follow standardized procedures during the inventory search. Instead, the motion simply asserted that the officers acted without a warrant, as follows:

> "The arrest and search of Mr. Meves [*sic*] occurred without a warrant. The court must therefore suppress the fruits of that search and seizure unless the prosecution bears its burden of 'proving some justification for the warrantless search or seizure.' ([*People v.* ]*Williams*, 20 Cal.4th at [p.] 136.) [¶] The California Supreme Court has concluded that a defendant must specify the grounds for suppression of the evidence in question. ([*Id.*] at [p.] 130.) However, defendants need only be specific enough to give the prosecution and the court 'reasonable notice.' (*Id.* at [p.] 131.) A defendant is under no burden to anticipate and refute possible justifications for warrantless searches or seizures and is therefore not required to put the People on notice as to defects in such justifications. (*Id.* at [p.] 130.)"

In response, the prosecution's opposition to the motion relied on the automobile exception of *Arizona v. Gant* (2009) 556 U.S. 332 to justify the search, quoting as follows: "'[C]ircumstances unique to the automobile context justify a search incident to arrest when it is *reasonable to believe that evidence of the offense of arrest might be found in the vehicle*.'" The prosecution explained:

> "In the present case, officers located the stolen wetsuit in the back[seat] of the defendant's vehicle. During the search of the interior of the vehicle, the officers also found several items that are commonly used as burglary tools. In addition, they also found credit cards that did not belong to either defendant in the vehicle and various other items that appeared to have been stolen. Given the fact that the officers had located stolen property and burglary tools in the defendants' vehicle, they had reason to believe that further evidence may be found in the trunk of the vehicle and therefore, they were warranted in searching therein for evidence that related to the crime for which [defendants] were arrested."

At the hearing on the motion, however, the prosecution relied on a different theory—impoundment and inventory. The prosecutor presented evidence that the Lexus was stopped on a busy, dangerous street and the officers decided to impound the Lexus because Collins's license was suspended and his passenger was also being arrested. The prosecutor then argued that the warrantless search was justified as an inventory search pursuant to impoundment of the Lexus. Collins's suspended license provided the officers authority to impound the Lexus, and because there was no licensed driver to drive the Lexus away, the impoundment served a community caretaking function.

Collins responded that the prosecution failed to prove the impoundment served a community caretaking function. He argued the impoundment was a pretext to search for evidence of criminal activity. But he did not argue the prosecution failed to prove the officers followed standardized procedures in conducting the search, nor did he mention closed containers. Under these circumstances, he is precluded from raising this argument on appeal. (*People v. Williams, supra,* 20 Cal.4th at p. 129.)

In summary, we conclude the officers' impoundment and inventory search of the Lexus were constitutionally reasonable. Accordingly, the trial court did not err in denying Collins's motion to suppress evidence found during the inventory search.

## DISPOSITION

The judgment is affirmed.